

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

FOUNDERS REAL ESTATE)
INVESTMENT TRUST)
an Indiana corporation,)
Plaintiff,) CASE NO. 1:18-CV-00295
vs.)
KINSALE INSURANCE COMPANY)
an Arkansas corporation,)
Defendants.)

NOTICE OF REMOVAL

KINSALE INSURANCE COMPANY (“Kinsale”), pursuant to 28 U.S.C. § 1441 explains its grounds for removal as follows:

The coverage issues were resolved in arbitration and Kinsale paid the award in full, but now Founders wants “bad faith” compensatory and punitive damages

1. Kinsale and FOUNDERS REAL ESTATE INVESTMENT TRUST (“Founders”) litigated coverage over two lawsuits against it by homeowners who allegedly suffered property damage caused by the diversion of a creek, installation and maintenance of a storm water drain pipe adjacent to Founders’ property.
2. Kinsale’s position was that under the Designated Premises Endorsement of the policy, coverage was barred because the pipe was not located on the property listed in the Endorsement. Ultimately, the arbitration panel disagreed with Kinsale and held that it owed defense and indemnity for the underlying actions. It is undisputed that

Kinsale fully satisfied the final arbitration award in the amount of \$101,730.57. (*Compl.*, Pg. 9.)

3. Even though Kinsale's payment included reimbursement for defense fees, indemnity for the two settlements, interest, and attorney's fees for the arbitration, now Founders wants compensatory and punitive damages in excess of the damages recovered in arbitration based on "bad faith." (*Id.*, Pg. 11.)

Removal is appropriate; there is complete diversity of citizenship.

4. Kinsale was at all times, including at the time this action was commenced, and this notice filed, an Arkansas corporation with its principal place of business in Virginia. Kinsale is accordingly a citizen of the states of Arkansas and Virginia.

5. Founders, was at all times, including at the time this action was commenced, and this notice filed, an Indiana company, with its principal place of business in Ohio. Founders is accordingly a citizen of the states of Indiana and Ohio.

Removal is appropriate; the requisite amount in controversy is satisfied.

6. In the complaint, Founders alleges that it "sustained damages beyond that recovered in the arbitration proceedings," which was \$101,730.57. Specifically, Founders seeks an award of bad faith compensatory damages, punitive damages, attorney's fees and costs. (*Id.*, Pg. 11.) Accordingly, it is evident that the amount in controversy is in excess of \$75,000, exclusive of interest, attorney's fees and costs.

7. Further, the Kinsale policy has an occurrence limit of \$1,000,000 which should also be considered for the amount in controversy here.

Removal is appropriate; removal is timely.

8. On January 10, 2018, Kinsale was served with the complaint by Founders.

Pursuant to 28 U.S.C. § 1446(b), this notice is accordingly timely since it was filed within thirty days after service of the state-court pleading.

Removal is appropriate; all of the elements are satisfied.

9. Because the plaintiff and defendant are citizens of different states, and because the amount in controversy is in excess of \$75,000, exclusive of interest, this action is removable to this Court pursuant to 28 U.S.C. § 1441.

10. Pursuant to 28 U.S.C. § 1446(b), a copy of all process, pleadings, and orders that, Kinsale has received are attached as Composite Exhibit "A."

11. A copy of this Notice of Removal was promptly filed with the Clerk of the Ohio Court of Common Pleas, Cuyahoga County, and served on all interested parties.

12. Kinsale, under 28 U.S.C. § 1441 and 28 U.S.C. § 1446, respectfully requests that this Court remove this action, which is currently pending in the Ohio Court of Common Pleas, Cuyahoga County.

Respectfully submitted,

/s/William H. Falin

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Kinsale Insurance Company

CERTIFICATE OF SERVICE

The foregoing Notice of Removal has been electronically filed this 6th day of February 2018 and will be sent via electronic mail and by operation of the Court's electronic filing system to:

Paul W. Flowers, Esq.
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Counsel for Plaintiff

/s/William H. Falin
WILLIAM H. FALIN, ESQ.

Counsel for Defendant